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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,138	09/16/2003	Kenichi Kitayama	HONZ 2 00012	3991
27885	7590	11/16/2005		
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			EXAMINER ENGLE, PATRICIA LYNN	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/663,138

Applicant(s)

KITAYAMA ET AL.

Examiner

Patricia L. Engle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10/3/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5-8, 12 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Habdas (US Patent 5,741,039).

Regarding claim 1, Habdas discloses a tailgate assembly mounted along an open edge of a vehicle's open load-carrying bed (20), the tailgate assembly comprising: a stamped sheet metal (column 6, lines 35-36) frame (8) having a reinforced cross-sectional shape with an inner side facing an associated vehicle's load-carrying bed (20) and an outer side opposite the inner side, said frame (8) pivotally connected (11) to a wall forming the vehicle's open load-carrying bed; and a paneless skin (1) attached to the outer side of the frame.

Regarding claim 2, Habdas discloses the tailgate assembly of claim 1 further including: a structural cladding (2) attached to the inner side of the frame (8) and substantially covering said inner side (Fig. 3A).

Regarding claim 3, Habdas discloses the tailgate assembly of claim 2 wherein the structural cladding (2) includes a corrugated section (Fig. 3A) to provide torsional and bending resistance.

Regarding claim 5, Habdas discloses the tailgate assembly of claim 1 wherein the frame having the reinforced cross-sectional shape includes a raised section (see below) extending

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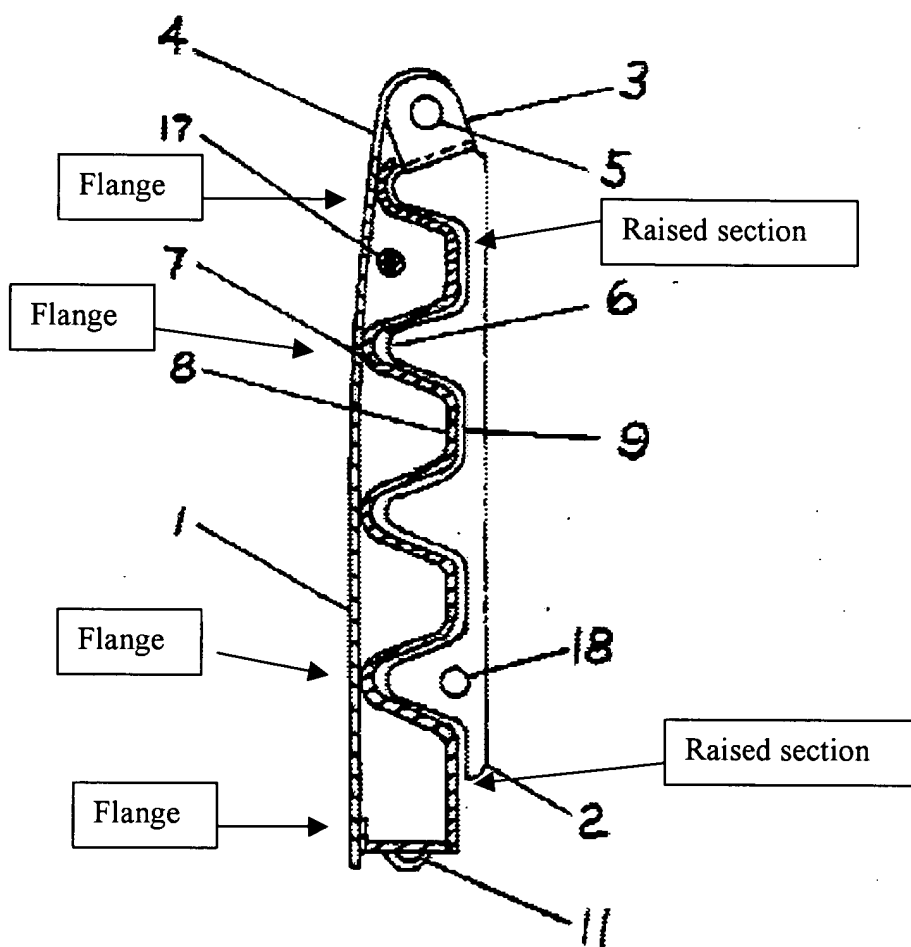
longitudinally along the entire length of each of a top edge and a bottom edge of the tailgate assembly for increasing the stiffness of the frame and resisting bending of the frame when a load is applied thereto.

Regarding claim 6, Habdas discloses the tailgate assembly of claim 5 wherein the frame further includes a peripheral flange (see below) located between the raised section and the perimeter of the frame.

Regarding claim 7, Habdas discloses the tailgate assembly of claim 6 wherein the skin is attached to the peripheral flange via welding (column 6, line 35).

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Regarding claim 8, Habdas discloses the tailgate assembly of claim 1 wherein the frame includes: a raised section (see above) defined along a frame perimeter; a peripheral flange (see above) extending outwardly from the raised section in a plane generally parallel to the tailgate,

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the skin (1) having a peripheral edge that mates with the frame peripheral flange for providing a welding seam that is relatively easy to access during assembly of the tailgate.

Regarding claim 12, Habdas discloses the tailgate assembly of claim 1 wherein the frame includes an embossed area (6,8,9) adjacent a perimeter of the frame.

Regarding claim 20, Habdas discloses the tailgate assembly of claim 1 wherein the stamped sheet metal frame (8) is an integral structure formed from a single steel sheet.

Regarding claim 21, Habdas discloses the tailgate assembly of claim 1 wherein the stamped sheet metal frame (8) substantially forms a tailgate structure (Fig. 1) and defines a size of the tailgate structure.

Regarding claim 22, Habdas discloses the tailgate assembly of claim 2 wherein the structural cladding (2) includes a corrugated section (6) and one side of the structural cladding defines an outer surface (Fig. 3A) of the tailgate assembly facing the open load-carrying bed.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

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the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 4, 13 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Habdas in view of the Applicant's Admissions.

Regarding claim 4, Habdas discloses the tailgate assembly of claims 1-3, 5-8 and 12. Regarding claim 13, Habdas discloses a vehicle closure structure comprising: a frame (8) having a double-hat shape (raised sections above) including a raised section (see above) and an inner flange (see above) and an outer flange (see above) flanking the raised section; a structural cladding (2) adjacent and connected to the raised section of the frame (8); and a skin (1) adjacent and connected to the outer flange of the frame. Regarding claim 17, Habdas disclose the vehicle closure structure further including: at least one stiffener (7) connected to the frame reinforcing for the frame. Regarding claim 15, Habdas discloses the vehicle closure structure wherein the structural cladding (2) includes a corrugated section (6) for spreading any load applied thereto to the frame. Regarding claim 16, Habdas discloses the vehicle closure structure wherein the corrugated section (6) is generally located in an area defined inside the raised section (Fig. 1).

Habdas does not disclose that the structural cladding is made of sheet molding compound.

The Applicant admits on page 13 of the Response filed on October 3, 2005, that sheet molding compound is "employed extensively in automotive panels".

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It has also been held to be within the general skill of the worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious mechanical expedient.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use sheet molding compound for the structural cladding.

The motivation would have been that "sheet molding compound ("SMC") is generally defined as a ready- to-mold material system that combines the reinforcement, thermosetting resin, fillers, pigments, catalysts, and other additives in a continuous sheet that is formable into complex shapes in a single molding step with minimal scrap material." 21 Kirk-othmer, Encyclopedia of Chemical Technology 199 (4th ed. 1997)- as cited by the Applicant on page 13 of the Amendment filed on October 3, 2005.

6. Claims 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Habdas in view of Grower (US Patent 5,169,201).

Habdas discloses the tailgate assembly of claims 1-3 and 5-8.

Habdas does not disclose that the tailgate includes a cap connected to the cladding and the skin over a top side of the frame.

Gower discloses a tailgate with a frame connected to a skin with a cladding on the inner side of the tailgate and a cap (48) connected to the cladding (58) and the skin over a top side of the frame (20).

Habdas and Gower are analogous art because they are from the same field of endeavor, i.e., tailgates with claddings.



At the time of the invention, it would have been obvious to one of ordinary skill in the art to include a cap at the top edge of the tailgate.

The motivation would have been to provide a durable wear surface thereover (Gower, column 4, lines 34-35).

Therefore, it would have been obvious to combine Gower with Habdas to obtain the invention as specified in claim 9.

7. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Habdas.

Habdas discloses the tailgate assembly of claim 1. Habdas does not disclose that the frame includes a reinforcing rib adjacent at least one edge of the frame, wherein the frame includes a reinforcing rib extending along each perimeter edge of the frame. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a reinforcing rib along each perimeter edge of the frame. The motivation would have been to increase the stiffness and load capacity of the tailgate.

8. Claims 14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Habdas in view of the Applicants Admissions as applied to claims 13 and 15-17 above, and further in view of Seksaria et al.

Habdas as modified discloses the tailgate of claims 13 and 15-17.

Habdas as modified does not disclose that a control mechanism for operating and disabling locks is mounted on the frame flange or that the frame includes reinforcements at the hinges.

Seksaria et al. disclose a control mechanism (92) for enabling and disabling the locks and a reinforcement (94) at the hinges.

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Habdas and Seksaria et al. are analogous art because they are from the same field of endeavor, i.e., tailgates.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to include a control mechanism and to include a hinge reinforcement. The motivation would have been to allow the tailgate to be locked and unlocked and to provide reinforcement at a high wear area.

Therefore, it would have been obvious to combine Seksaria et al. with Habdas to obtain the invention as specified in claims 14 and 18.

9. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Habdas in view of Smith (US Patent 2,806,735).

Habdas discloses the tailgate of claims 1-3, 5-8 and 12.

Habdas does not disclose that the tailgate pivots about a horizontal and vertical axis.

Smith discloses a tailgate which pivots about a horizontal axis and a vertical axis.

Habdas and Smith are analogous art because they are from the same field of endeavor, i.e., tailgates.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to allow the tailgate to pivot about a horizontal axis or a vertical axis.

The motivation would have been to give the truck operator greater versatility in loading and unloading the truck bed.

Therefore, it would have been obvious to combine Smith with Komatsu et al. to obtain the invention as specified in claim 19.

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*Response to Arguments*

10. Applicant's arguments with respect to claims 1-12 and 20-22 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Engle whose telephone number is (571) 272-6660.

The examiner can normally be reached on Monday - Friday from 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Glenn Dayoan can be reached on (571) 272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Patricia L Engle  
Primary Examiner  
Art Unit 3612

ple  
November 8, 2005